

# **EXHIBIT 4**

DECLARATION OF ADRIENNE D. MCENTEE IN  
SUPPORT OF DEFENDANT'S SUPPLEMENTAL  
RESPONSE TO MOTION FOR SUMMARY  
JUDGMENT - 26  
CASE NO. 2:17-CV-01731-TSZ

US. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

STRIKE 3 HOLDINGS, LLC, A )  
DELAWARE CORPORATION, )  
 )  
PLAINTIFF, )  
 )  
VS. ) CASE NO.  
 ) 2:17-CV-01731Tzs  
 )  
JOHN DOE SUBSCRIBER ASSIGNED IP )  
ADDRESS 73.225.38.130, )  
DEFENDANT. )  
\_\_\_\_\_  
 )  
JOHN DOE, SUBSCRIBER ASSIGNED IP )  
ADDRESS 73.225.38.130, )  
 )  
COUNTERCLAIMANT, )  
 )  
VS. )  
 )  
STRIKE 3 HOLDINGS, LLC, )  
 )  
COUNTERDEFENDANT. )  
\_\_\_\_\_  
 )

DEPOSITION OF JESSICA FERNANDEZ, taken on behalf  
of the Counterclaimant, at 35 Hugus Alley, Pasadena,  
California, commencing at 10:08 a.m., Friday, April 12, 2019,  
before Sandra Mitchell, C.S.R. 12553, pursuant to Notice.

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1 A I don't know what's being determined.

2 Q Well, who are you going to sue?

3 A It's done through a filtering process. It's --  
4 no one does it. I think it's an automatic process. We  
5 filter out states that we're not -- we don't have local  
6 counsel in. We filter out internet service providers  
7 that are not reliable. We filter out anyone who's  
8 infringed under a certain amount of works.

9 Q So you said --

10 A It's all automatic, though.

11 Q So the filtering is automatic?

12 A Yes.

13 Q Who wrote the automatic filtering software?

14 A It would probably be Sid.

15 Q Sid. Who works for?

16 A GMS.

17 Q GMS. Okay.

18 And do you know Sid's last name?

19 A He's in --

20 MR. BANDLOW: Don't give it, please. But --

21 THE WITNESS: I don't recall it anyway.

22 MR. EDMONDSON: It's covered by the protective  
23 order.

24 BY MR. EDMONDSON:

25 Q What's Sid's last name?

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1       Garciapath?

2           A      I glanced at it at some point. Not in  
3 preparation for this deposition, because it wasn't in  
4 the list of topics, but I glanced at it at some point in  
5 the past.

6           Q      Okay. When you say glanced at it, did you  
7 actually read it or just --

8           A      No, I didn't -- I did not read it in great  
9 detail.

10          Q     Did you see the columns on the report?

11          A     No.

12          Q     No?

13          A     It doesn't ring a bell.

14          Q     Do you have any idea what percentage of the  
15 film of your work is sampled from the alleged  
16 infringer's system to form a basis for infringement?

17          A     No.

18          Q     Do you know -- you talked about the worst of  
19 the worst. Do you have a standard at Strike 3 Holdings  
20 to determine how much of the work has to be on the  
21 alleged infringer's computer to make a determination of  
22 whether that person is the worst of the worst?

23          A     No.

24          Q     In the data provided to you by IPP, is there a  
25 column that shows the percentage of the work that's been

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1       sampled by IPP?

2       A     So yes. It's called the bit value.

3       Q     Okay.

4       A     And just to go backwards, I think it was -- you  
5       had asked me another question about the percentage of  
6       work on an infringer's computer that would -- what was  
7       the question again? The first -- the one before that.

8                  What I was going to say to that was that,  
9       typically, when there is an IP address that has, over  
10      the course of, let's say, like, nine months been  
11      infringing our works -- and this can span across  
12      different brands, of course -- it is our understanding  
13      that at that point, the individual has been downloading  
14      and has very likely downloaded to completion each of the  
15      works, or at least the majority of the works. Because  
16      if not, they wouldn't continue to go back and look for  
17      more Blacked, Vixen, Tushy.

18                  So an IP address isn't going -- there's not  
19      going to be a ton of PCAPs on somebody who is not going  
20      back and downloading more and more and more the same  
21      content, if that makes sense. So I may not  
22      necessarily -- like, unless I have the defendant's  
23      computer, I'm not going to necessarily know that he has  
24      the entire work, let's say. But I know that this  
25      particular IP address went into 87 different swarms all

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1 for the same content over and over and over and over the  
2 span of eight months.

3 That's telling me something at that point.  
4 They're not just clicking on a file, downloading half of  
5 it, and then saying forget it, I don't want Anal  
6 Threesomes. I want Anal Threesomes 2 instead and then  
7 switching on over. So usually the data is very telling  
8 as to that point.

9 Q Telling to the extent of that IP address?

10 A Correct, yes.

11 Q But not a particular computer behind the IP  
12 address; correct?

13 A No -- yeah -- well, that's not entirely true.  
14 The data that we get from IPP will also have a port  
15 number associated with each of the transactions. So  
16 each of the -- like, on an infringement log you'll see,  
17 you know, what BitTorrent client they use. But you can  
18 also see a port number. And a port number is something  
19 that is randomly assigned to -- so when you install a  
20 BitTorrent software on your computer, your computer will  
21 randomly assign it a port number.

22 And so I might be able to look at a port number  
23 and say, oh, wow, we have -- the infringement log shows  
24 300 separate transactions for a number of works. And I  
25 can see that the port number is the same for all of

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1 them. That tells me that it's the same computer. But  
2 sometimes you might be able to see that there's five  
3 different, you know, port numbers and that tells me it's  
4 very likely five different computers. So to some  
5 degree, yes, it -- it doesn't identify the computer  
6 itself, but it tells you -- it might be able to kind of  
7 narrow in how many computers may have been used for the  
8 infringement.

9 Q Well, do you make a determination based on  
10 multiple port numbers or --

11 A Make a determination?

12 Q A determination of whether to sue?

13 A Oh, no. That's just more of something in  
14 discovery that I'm looking at. If I know -- it kind of  
15 tells me a little bit, like, how many computers are  
16 likely at issue. So you may disclose 100 devices, but I  
17 may be able to narrow it in and say, actually, I think  
18 it's maybe just one or two devices, or -- it just would  
19 depend on the port number. And this is just something  
20 that would help us.

21 Q But at time of the analysis --

22 A We don't look at the port numbers at that time.

23 Q Okay.

24 A Not usually.

25 Q And so you -- but at this point, can you

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1 identify an individual using that computer?

2 A I guess I'm not -- you want me to be able to  
3 identify -- you're asking me who the infringer is, it  
4 sounds like.

5 MR. BANDLOW: When we have all this data, do we  
6 know the specific individual?

7 THE WITNESS: Oh, yeah, no. There's -- you  
8 know, no.

9 BY MR. EDMONDSON:

10 Q So any person who's accessed that IP address;  
11 correct?

12 A Yeah.

13 Q Okay. And does IPP know that multiple people  
14 can access the IP address?

15 A I don't what IPP knows.

16 Q Excuse me. I mixed it up. Does Strike 3  
17 Holdings know that multiple individuals can access an IP  
18 address?

19 A Absolutely.

20 Q Okay. And how do you account for the fact that  
21 multiple people in a household can access that  
22 particular IP address?

23 A How do I know that?

24 Q No, how do you -- how do you account for it in  
25 your determination of the worst of the worst?

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1           A     Oh. So that determination is -- it's not  
 2 something that we are able to really look at until after  
 3 we get the defendant's name. So once we know who the  
 4 defendant is, we can -- and where they live, of course,  
 5 we can, you know, determine if they might be living with  
 6 someone, say a son perhaps, or a wife. We know if they  
 7 live in an apartment complex. At times later on, even  
 8 in discovery, other information is disclosed and they  
 9 may, you know, be able to tell us if they had a tenant  
 10 in the home. That happens sometimes during settlement  
 11 negotiations, a defendant will bring forth exculpatory  
 12 evidence that says, you know, I actually have a tenant;  
 13 here's the lease that proves it. And at that point, you  
 14 know, we obviously abide by Rule 11 and we wouldn't  
 15 pursue someone that we knew was not the infringer, so  
 16 long as we knew that they were not the infringer. But  
 17 it's hard to do that when you don't have someone's name.

18           Q     Uh-huh.

19           A     It's impossible to do that when you don't have  
 20 someone's name.

21           Q     What's the average settlement amount with the  
 22 purported infringers in all your cases?

23           MR. BANDLOW: This would be designated  
 24 confidential to the extent you know.

25           THE WITNESS: I actually don't know the